

111TH CONGRESS
1ST SESSION

S. 246

To amend title 38, United States Code, to improve the quality of care provided to veterans in Department of Veterans Affairs medical facilities, to encourage highly qualified doctors to serve in hard-to-fill positions in such medical facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2009

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the quality of care provided to veterans in Department of Veterans Affairs medical facilities, to encourage highly qualified doctors to serve in hard-to-fill positions in such medical facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Health Care
5 Quality Improvement Act”.

1 **SEC. 2. STANDARDS FOR APPOINTMENT AND PRACTICE OF**
 2 **PHYSICIANS IN DEPARTMENT OF VETERANS**
 3 **AFFAIRS MEDICAL FACILITIES.**

4 (a) STANDARDS.—

5 (1) IN GENERAL.—Subchapter I of chapter 74
 6 of title 38, United States Code, is amended by in-
 7 serting after section 7402 the following new section:

8 **“§ 7402A. Appointment and practice of physicians:**
 9 **standards**

10 “(a) IN GENERAL.—The Secretary shall, acting
 11 through the Under Secretary for Health, prescribe stand-
 12 ards to be met by individuals in order to qualify for ap-
 13 pointment in the Administration in the position of physi-
 14 cian and to practice as a physician in medical facilities
 15 of the Administration. The standards shall incorporate the
 16 requirements of this section.

17 “(b) DISCLOSURE OF CERTAIN INFORMATION BE-
 18 FORE APPOINTMENT.—Each individual seeking appoint-
 19 ment in the Administration in the position of physician
 20 shall do the following:

21 “(1) Provide the Secretary a full and complete
 22 explanation of the following:

23 “(A) Each lawsuit, civil action, or other
 24 claim (whether open or closed) brought against
 25 the individual for medical malpractice or neg-
 26 ligence (other than a lawsuit, action, or claim

1 closed without any judgment against or pay-
2 ment by or on behalf of the individual).

3 “(B) Each payment made by or on behalf
4 of the individual to settle any lawsuit, action, or
5 claim covered by subparagraph (A).

6 “(C) Each investigation or disciplinary ac-
7 tion taken against the individual relating to the
8 individual’s performance as a physician.

9 “(2) Submit a written request and authoriza-
10 tion to the State licensing board of each State in
11 which the individual holds or has held a license to
12 practice medicine to disclose to the Secretary any in-
13 formation in the records of such State on the fol-
14 lowing:

15 “(A) Each lawsuit, civil action, or other
16 claim brought against the individual for medical
17 malpractice or negligence covered by paragraph
18 (1)(A) that occurred in such State.

19 “(B) Each payment made by or on behalf
20 of the individual to settle any lawsuit, action, or
21 claim covered by subparagraph (A).

22 “(C) Each medical malpractice judgment
23 against the individual by the courts or adminis-
24 trative agencies or bodies of such State.

1 “(D) Each disciplinary action taken or
 2 under consideration against the individual by
 3 an administrative agency or body of such State.

4 “(E) Any change in the status of the li-
 5 cense to practice medicine issued the individual
 6 by such State, including any voluntary or non-
 7 disciplinary surrendering of such license by the
 8 individual.

9 “(F) Any open investigation of the indi-
 10 vidual by an administrative agency or body of
 11 such State, or any outstanding allegation
 12 against the individual before such an adminis-
 13 trative agency or body.

14 “(G) Any written notification to the indi-
 15 vidual by such State of a potential termination
 16 of such license for cause or otherwise.

17 “(c) DISCLOSURE OF CERTAIN INFORMATION FOL-
 18 LOWING APPOINTMENT.—(1) Each individual appointed
 19 in the Administration in the position of physician after
 20 the date of the enactment of the Veterans Health Care
 21 Quality Improvement Act shall, as a condition of service
 22 under the appointment, disclose to the Secretary, not later
 23 than 30 days after the occurrence of such event, the fol-
 24 lowing:

1 “(A) A judgment against the individual for
2 medical malpractice or negligence.

3 “(B) A payment made by or on behalf of the
4 individual to settle any lawsuit, action, or claim dis-
5 closed under paragraph (1) or (2) of subsection (b).

6 “(C) Any disposition of or material change in a
7 matter disclosed under paragraph (1) or (2) of sub-
8 section (b).

9 “(2) Each individual appointed in the Administration
10 in the position of physician as of the date of the enactment
11 of the Veterans Health Care Quality Improvement Act
12 shall do the following:

13 “(A) Not later than the end of the 60-day pe-
14 riod beginning on the date of the enactment of that
15 Act and as a condition of service under the appoint-
16 ment after the end of that period, submit the re-
17 quest and authorization described in subsection
18 (b)(2).

19 “(B) Agree, as a condition of service under the
20 appointment, to disclose to the Secretary, not later
21 than 30 days after the occurrence of such event, the
22 following:

23 “(i) A judgment against the individual for
24 medical malpractice or negligence.

1 “(ii) A payment made by or on behalf of
 2 the individual to settle any lawsuit, action, or
 3 claim disclosed pursuant to subparagraph (A)
 4 or under this subparagraph.

5 “(iii) Any disposition of or material change
 6 in a matter disclosed pursuant to subparagraph
 7 (A) or under this subparagraph.

8 “(3) Each individual appointed in the Administration
 9 in the position of physician shall, as part of the biennial
 10 review of the performance of the physician under the ap-
 11 pointment, submit the request and authorization described
 12 in subsection (b)(2). The requirement of this paragraph
 13 is in addition to the requirements of paragraph (1) or (2),
 14 as applicable.

15 “(d) INVESTIGATION OF DISCLOSED MATTERS.—(1)
 16 The Director of the Veterans Integrated Services Network
 17 (VISN) in which an individual is seeking appointment in
 18 the Administration in the position of physician shall per-
 19 form an investigation (in such manner as the standards
 20 required by this section shall specify) of each matter dis-
 21 closed under subsection (b) with respect to the individual.

22 “(2) The Director of the Veterans Integrated Serv-
 23 ices Network in which an individual is appointed in the
 24 Administration in the position of physician shall perform
 25 an investigation (in a manner so specified) of each matter

1 disclosed under subsection (c) with respect to the indi-
2 vidual.

3 “(3) The results of each investigation performed
4 under this subsection shall be fully documented.

5 “(e) APPROVAL OF APPOINTMENTS BY DIRECTORS
6 OF VISNs.—(1) An individual may not be appointed in
7 the Administration in the position of physician without the
8 approval of the Director of the Veterans Integrated Serv-
9 ices Network in which the individual will first serve under
10 the appointment.

11 “(2) In approving the appointment under this sub-
12 section of an individual for whom any matters have been
13 disclosed under subsection (b), a Director shall—

14 “(A) certify in writing the completion of the
15 performance of the investigation under subsection
16 (d)(1) of each such matter, including the results of
17 such investigation; and

18 “(B) provide a written justification why any
19 matters raised in the course of such investigation do
20 not disqualify the individual from appointment.

21 “(3) A Director shall provide copies of the certifi-
22 cation and the written justification with respect to an indi-
23 vidual under paragraph (2) to the National Quality Assur-
24 ance Officer and the Quality Assurance Officer of the Net-

1 work in which the individual will first serve under the ap-
 2 proved appointment.

3 “(f) ENROLLMENT OF PHYSICIANS WITH PRACTICE
 4 PRIVILEGES IN PROACTIVE DISCLOSURE SERVICE.—Each
 5 medical facility of the Department at which physicians are
 6 extended the privileges of practice shall enroll each physi-
 7 cian extended such privileges in the Proactive Disclosure
 8 Service of the National Practitioners Data Bank

9 “(g) ENCOURAGEMENT OF EMPLOYMENT OF PHYSI-
 10 CIANS WITH BOARD CERTIFICATION.—The Secretary
 11 shall include in each performance contract with a Director
 12 of a Veterans Integrated Services Network a provision
 13 that encourages the Director to hire in such Network phy-
 14 sicians who are board certified in the specialty in which
 15 the physicians will practice. Each such provision shall in-
 16 clude such elements as the Secretary considers appro-
 17 priate.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
 19 tions at the beginning of chapter 74 of such title is
 20 amended by inserting after the item relating to sec-
 21 tion 7402 the following new item:

“7402A. Appointment and practice of physicians: standards.”.

22 (b) EFFECTIVE DATE AND APPLICABILITY.—

23 (1) EFFECTIVE DATE.—Except as provided in
 24 paragraph (2) and (3), the amendments made by

1 subsection (a) shall take effect on the date of the en-
 2 actment of this Act.

3 (2) ENROLLMENT IN PROACTIVE DISCLOSURE
 4 SERVICE OF PHYSICIANS PRACTICING ON EFFECTIVE
 5 DATE.—In the case of an individual appointed to the
 6 Veterans Health Administration in the position of
 7 physician as of the date of the enactment of this
 8 Act, the requirements of subsection (f) of section
 9 7402A of title 38, United States Code, as added by
 10 subsection (a), shall take effect on the date that is
 11 60 days after the date of the enactment of this Act.

12 (3) CONTRACT PROVISIONS ENCOURAGING EM-
 13 PLOYMENT OF PHYSICIANS WITH BOARD CERTIFI-
 14 CATION.—The provisions of subsection (g) of such
 15 section 7402A, as so added, shall apply to any per-
 16 formance contract of a Director of a Veterans Inte-
 17 grated Services Network entered into during or after
 18 the first cycle of such performance contracts begin-
 19 ning on or after that date.

20 **SEC. 3. ENHANCEMENT OF QUALITY ASSURANCE BY THE**
 21 **VETERANS HEALTH ADMINISTRATION.**

22 (a) ENHANCEMENT OF QUALITY ASSURANCE
 23 THROUGH QUALITY ASSURANCE OFFICERS.—

1 (1) IN GENERAL.—Subchapter II of chapter 73
 2 of title 38, United States Code, is amended by in-
 3 serting after section 7311 the following new section:

4 **“§ 7311A. Quality assurance officers**

5 “(a) NATIONAL QUALITY ASSURANCE OFFICER.—(1)
 6 The Under Secretary for Health shall designate an official
 7 of the Veterans Health Administration to act as the prin-
 8 cipal quality assurance officer for the quality-assurance
 9 program required by section 7311 of this title. The official
 10 so designated may be known as the ‘National Quality As-
 11 surance Officer of the Veterans Health Administration’ (in
 12 this section referred to as the ‘National Quality Assurance
 13 Officer’).

14 “(2) The National Quality Assurance Officer shall re-
 15 port directly to the Under Secretary for Health in the dis-
 16 charge of responsibilities and duties of the Officer under
 17 this section.

18 “(3) The National Quality Assurance Officer shall be
 19 the official within the Administration who is principally
 20 responsible for the quality-assurance program referred to
 21 in paragraph (1). In carrying out that responsibility, the
 22 Officer shall be responsible for—

23 “(A) establishing and enforcing the require-
 24 ments of that program; and

1 “(B) carrying out such other responsibilities
2 and duties relating to quality assurance in the Ad-
3 ministration as the Under Secretary for Health shall
4 specify.

5 “(4) The requirements under paragraph (3) shall in-
6 clude requirements regarding the following:

7 “(A) A confidential system for the submittal of
8 reports by Administration personnel regarding qual-
9 ity assurance at Department facilities.

10 “(B) Mechanisms for the peer review of the ac-
11 tions of individuals appointed in the Administration
12 in the position of physician.

13 “(C) Mechanisms for the accountability of the
14 facility director and chief medical officer of each Ad-
15 ministration medical facility for the actions of physi-
16 cians in such facility.

17 “(b) QUALITY ASSURANCE OFFICERS FOR VISNs.—
18 (1) The Director of each Veterans Integrated Services
19 Network (VISN) shall appoint an official of the Network
20 to act as the quality assurance officer of the Network.

21 “(2) Each official appointed as a quality assurance
22 officer under this subsection shall be a board-certified phy-
23 sician.

24 “(3) The quality assurance officer for a Veterans In-
25 tegrated Services Network shall report to the Director of

1 the Veterans Integrated Services Network, and to the Na-
 2 tional Quality Assurance Officer, regarding the discharge
 3 of the responsibilities and duties of the officer under this
 4 section.

5 “(4) The quality assurance officer for a Veterans In-
 6 tegrated Services Network shall—

7 “(A) direct the quality assurance office in the
 8 Network; and

9 “(B) coordinate, monitor, and oversee the qual-
 10 ity-assurance programs and activities of the Admin-
 11 istration medical facilities in the Network in order to
 12 ensure the thorough and uniform discharge of qual-
 13 ity assurance requirements under such programs
 14 and activities throughout such facilities.

15 “(c) QUALITY ASSURANCE OFFICERS FOR MEDICAL
 16 FACILITIES.—(1) The director of each Administration
 17 medical facility shall appoint a quality assurance officer
 18 for that facility.

19 “(2) Each official appointed as a quality assurance
 20 officer under this subsection shall be a board-certified phy-
 21 sician.

22 “(3) The official appointed as a quality assurance of-
 23 ficer for a facility under this subsection shall be a prac-
 24 ticing physician at the facility. If the official appointed as
 25 quality assurance officer for a facility has other clinical

1 or administrative duties, the director of the facility shall
 2 ensure that those duties are sufficiently limited in scope
 3 so as to ensure that those duties do not prevent the officer
 4 from effectively discharging the responsibilities and duties
 5 of quality assurance officer at the facility.

6 “(4) The quality assurance officer for a facility shall
 7 report directly to the director of the facility, and to the
 8 quality assurance officer of the Veterans Integrated Serv-
 9 ices Network in which the facility is located, regarding the
 10 discharge of the responsibilities and duties of the quality
 11 assurance officer under this section.

12 “(5) The quality assurance officer for a facility shall
 13 be responsible for designing, disseminating, and imple-
 14 menting quality-assurance programs and activities for the
 15 facility that meet the requirements established by the Na-
 16 tional Quality Assurance Officer under subsection (a).”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
 18 tions at the beginning of chapter 73 of such title is
 19 amended by inserting after the item relating to sec-
 20 tion 7311 the following new item:

“7311A. Quality assurance officers.”.

21 (b) REPORTS ON QUALITY CONCERNS UNDER QUAL-
 22 ITY-ASSURANCE PROGRAM.—Section 7311(b) of such title
 23 is amended by adding at the end the following new para-
 24 graph:

1 “(4) As part of the quality-assurance program, the
 2 Under Secretary for Health shall establish mechanisms
 3 through which employees of Administration facilities may
 4 submit reports, on a confidential basis, on matters relating
 5 to quality of care in Administration facilities to the quality
 6 assurance officers of such facilities under section
 7 7311A(c) of this title and to the quality assurance officers
 8 of the Veterans Integrated Services Networks (VISNs) in
 9 which such facilities are located under section 7311A(b)
 10 of this title. The mechanisms shall provide for the prompt
 11 and thorough review of any reports so submitted by the
 12 receiving officials.”.

13 (c) REVIEW OF CURRENT HEALTH CARE QUALITY
 14 SAFEGUARDS.—

15 (1) IN GENERAL.—The Secretary of Veterans
 16 Affairs shall conduct a comprehensive review of all
 17 current policies and protocols of the Department of
 18 Veterans Affairs for maintaining health care quality
 19 and patient safety at Department of Veterans Af-
 20 fairs medical facilities. The review shall include a re-
 21 view and assessment of the National Surgical Qual-
 22 ity Improvement Program (NSQIP), including an
 23 assessment of—

24 (A) the efficacy of the quality indicators
 25 under the program;

1 (B) the efficacy of the data collection
2 methods under the program;

3 (C) the efficacy of the frequency with
4 which regular data analyses are performed
5 under the program; and

6 (D) the extent to which the resources allo-
7 cated to the program are adequate to fulfill the
8 stated function of the program.

9 (2) REPORT.—Not later than 60 days after the
10 date of the enactment of this Act, the Secretary
11 shall submit to Congress a report on the review con-
12 ducted under paragraph (1), including the findings
13 of the Secretary as a result of the review and such
14 recommendations as the Secretary considers appro-
15 priate in light of the review.

16 **SEC. 4. INCENTIVES TO ENCOURAGE HIGH-QUALITY PHYSI-**
17 **CIA NS TO SERVE IN THE VETERANS HEALTH**
18 **ADMINISTRATION.**

19 (a) INCENTIVES REQUIRED.—

20 (1) IN GENERAL.—Subchapter III of chapter
21 74 of title 38, United States Code, is amended by
22 inserting after section 7431 the following new sec-
23 tion:

1 **“§ 7431A. Physicians: additional incentives for service**
 2 **in hard-to-fill positions**

3 “(a) LOAN REPAYMENT FOR PHYSICIANS WHO
 4 SERVE IN HARD-TO-FILL POSITIONS.—(1) In order to re-
 5 cruit and retain physicians in the Administration in hard-
 6 to-fill positions (as designated by the Secretary for pur-
 7 poses of this subsection), the Secretary shall carry out a
 8 program under which the Secretary may repay, for each
 9 individual who agrees to serve as a physician for a period
 10 of not less than three years in an Administration facility
 11 in such a position and seeks such repayment, any loan
 12 of such individual as follows:

13 “(A) Any loan of the individual described in
 14 paragraphs (1) through (4) of section 16302(a) of
 15 title 10.

16 “(B) Any other loan of the individual des-
 17 ignated by the Secretary for purposes of this sub-
 18 section the proceeds of which were used by the indi-
 19 vidual to finance education leading to the medical
 20 degree of the individual.

21 “(2) Each individual seeking repayment of loans
 22 under paragraph (1) shall enter into an agreement with
 23 the Secretary regarding the repayment of loans. Under the
 24 agreement, the individual shall agree—

25 “(A) to perform satisfactory service in a physi-
 26 cian position specified in the agreement in an Ad-

1 ministration facility specified in the agreement for
 2 such period of years as the agreement shall specify;
 3 and

4 “(B) to possess and retain for the period of the
 5 agreement such professional qualifications as are
 6 necessary for the service specified under subpara-
 7 graph (A).

8 “(3) Repayment of loans under this subsection shall
 9 be made on the basis of complete years of service under
 10 the agreement under this subsection. The amount to be
 11 repayed under an agreement under this subsection for a
 12 complete year of service specified in the agreement shall
 13 be such amount, not to exceed \$30,000, for each complete
 14 year of service as the agreement shall specify.

15 “(4) An individual receiving loan repayment under
 16 paragraph (1) who does not satisfy the requirements of
 17 the agreement under paragraph (2) shall be subject to
 18 such repayment requirements as the Secretary shall speci-
 19 fy in the agreement.

20 “(b) TUITION REIMBURSEMENT FOR PHYSICIAN
 21 STUDENTS WHO AGREE TO SERVE IN HARD-TO-FILL
 22 POSITIONS.—(1) In order to recruit and retain physicians
 23 in the Administration in hard-to-fill positions (as des-
 24 ignated by the Secretary for purposes of this subsection),
 25 the Secretary shall carry out a program under which the

1 Secretary may reimburse individuals who are enrolled in
 2 a course of education leading toward board certification
 3 as a physician and seek such reimbursement for the tui-
 4 tion charged for pursuit of such course of education if
 5 such individuals agree to serve as a physician in an Ad-
 6 ministration facility in such a position.

7 “(2) Each individual seeking tuition reimbursement
 8 under paragraph (1) shall enter into an agreement with
 9 the Secretary regarding such tuition reimbursement.
 10 Under the agreement, the individuals shall agree—

11 “(A) to satisfactorily complete the course of
 12 education of the individual described in paragraph
 13 (1); and

14 “(B) upon completion of the course of edu-
 15 cation, to become board-certified as a physician; and

16 “(C) upon completion of the matters referred to
 17 in subparagraphs (A) and (B)—

18 “(i) to perform satisfactory service in a
 19 physician position specified in the agreement in
 20 an Administration facility specified in the
 21 agreement for such period of years as the
 22 agreement shall specify; and

23 “(ii) to possess and retain for the period of
 24 the agreement such professional qualifications

1 as are necessary for the service specified under
 2 clause (i).

3 “(3) The amount of reimbursement payable to an in-
 4 dividual under paragraph (1) for a year may not exceed
 5 \$30,000.

6 “(4) Any individual receiving tuition reimbursement
 7 under paragraph (1) who does not satisfy the require-
 8 ments of the agreement under paragraph (2) shall be sub-
 9 ject to such repayment requirements as the Secretary shall
 10 specify in the agreement.

11 “(5) An individual receiving tuition reimbursement
 12 under paragraph (1) for pursuit of a course of education
 13 shall also be paid a stipend in the amount of \$5,000 for
 14 each academic year of pursuit of such course of education
 15 after entry into an agreement under paragraph (2).

16 “(c) PARTICIPATION IN FEHBP OF PHYSICIANS
 17 WHO SERVE PART-TIME IN HARD-TO-FILL POSITIONS.—

18 (1) In order to recruit and retain physicians in the Admin-
 19 istration in hard-to-fill positions (as designated by the Sec-
 20 retary for purposes of this subsection), an individual not
 21 otherwise eligible for health insurance under chapter 89
 22 of title 5 who agrees to serve as a physician in an Adminis-
 23 tration facility in such a position for not less than five
 24 days per month (of which two days must occur in each
 25 14-day period) shall be eligible for enrollment in the health

1 benefit plans under chapter 89 of title 5 on a self only
 2 or self and family basis (as applicable).

3 “(2) The Secretary shall administer this subsection
 4 in consultation with the Director of the Office of Per-
 5 sonnel Management.

6 “(d) ADDITIONAL PROGRAMS.—It is the sense of
 7 Congress that the Secretary should undertake active and
 8 on-going efforts to establish additional incentive programs
 9 to encourage individuals to serve in the position of physi-
 10 cian in the Administration, or otherwise practice in the
 11 Administration, in hard-to-fill positions, including, in par-
 12 ticular, incentive programs to encourage more experienced
 13 physicians to serve or practice in such positions.

14 “(e) CONSTRUCTION.—The incentives required under
 15 this section are in addition to any other special pays or
 16 benefits to which the individuals covered by this section
 17 are eligible or entitled under law.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
 19 tions at the beginning of chapter 74 of such title is
 20 amended by inserting after the item relating to sec-
 21 tion 731 the following new item:

“7431A. Physicians: additional incentives for service in hard-to-fill positions.”.

22 (b) AFFILIATION OF DEPARTMENT OF VETERANS
 23 AFFAIRS MEDICAL FACILITIES WITH MEDICAL
 24 SCHOOLS.—The Secretary of Veterans Affairs shall, to the
 25 extent practicable, require each medical facility of the De-

1 partment of Veterans Affairs to seek to establish an affili-
2 ation with a medical school within reasonable proximity
3 of such medical facility.

4 **SEC. 5. REPORTS TO CONGRESS.**

5 (a) REPORT.—Not later than December 15, 2009,
6 and each year thereafter through 2012, the Secretary of
7 Veterans Affairs shall submit to the congressional vet-
8 erans affairs committees a report on the implementation
9 of this Act and the amendments made by this Act during
10 the preceding fiscal year. Each report shall include, for
11 the fiscal year covered by such report, the following:

12 (1) A comprehensive description of the imple-
13 mentation of this Act and the amendments made by
14 this Act.

15 (2) Such recommendations as the Secretary
16 considers appropriate for legislative or administra-
17 tive action to improve the authorities and require-
18 ments in this Act and the amendments made by this
19 Act or to otherwise improve the quality of health
20 care and the quality of the physicians in the Vet-
21 erans Health Administration.

22 (b) CONGRESSIONAL VETERANS AFFAIRS COMMIT-
23 TEES DEFINED.—In this section, the term “congressional
24 veterans affairs committees” means—

- 1 (1) the Committees on Veterans' Affairs and
- 2 Appropriations of the Senate; and
- 3 (2) the Committees on Veterans' Affairs and
- 4 Appropriations of the House of Representatives.

